

SETTLEMENT AGREEMENT

[KHZR-KDAA]

THIS SETTLEMENT AGREEMENT is made and entered into effective as of the 3rd day of October, 2005, by and among KDAA-KMOZ, LLC ("KKL"), licensee of KDAA(FM), Rolla, MO, and Four Him Enterprises, L.L.C. ("Four Him"), licensee of KHZR(FM), Potosi, MO.

WITNESSETH:

WHEREAS, Four Him and Ozark Broadcasting, Inc. ("Ozark") have pending before the Federal Communications Commission ("FCC") a Joint Petition for Approval of Agreement and Other Relief," under the terms of which Four Him would pay Ozark for downgrading Station KJEL, Lebanon, MO, to Class C0 in order to allot Channel 249C2 at Potosi, MO and upgrade Station KHZR (the "KHZR Upgrade"). That would require, *inter alia*, the substitution of Channel 276A for Channel 248A at Rolla, MO and the modification of KDAA's license ("KDAA Channel Change").

WHEREAS, KKL, on August 10, 2005, objected to Four Him's proposal, and KKL is now willing to withdraw its objections;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Dismissal of Adverse Pleadings.** Concurrently herewith, KKL and Four Him shall file with the FCC jointly a Joint Request for Approval and for Other Relief ("Joint Request") of the dismissal of KKL's Opposition to Petition for Reconsideration and Opposition to Joint Request for Approval of Settlement Agreement and for Other Relief (collectively, "Adverse Pleadings"). KKL shall in good faith pursue approval by the FCC of the dismissal of the Adverse Pleadings and shall take whatever additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, the dismissal of the Adverse Pleadings and the KHZR Upgrade..

2. **Affidavits.** Pursuant to Section 73.3525(a) of the Rules, by signing this agreement, KKL and Four Him declare under penalty of perjury, that this agreement is in the public interest because it will result in improved service to the residents of Potosi, MO; and will conserve Commission resources by resolving litigation over the amount of reimbursement to which KKL is entitled for the KDAA Channel Change.

3. **Consideration for SRC's Dismissal.** As consideration for dismissal of the Adverse Pleadings and the KDAA Channel Change, Four Him shall pay to KKL the sum of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00) (the "Settlement Payment"), in complete satisfaction of any claim KKL may have for costs or reimbursement of costs associated with the KDAA Channel Change or any change in channel to accommodate the KHZR Upgrade. Said payment also represents a portion of the legitimate and prudent expenses incurred an to be incurred by KKL in connection with this litigation and the change of the operating channel of

KDAA. Within 20 business days (i.e., by October 17, 2005) following execution of this agreement, Four Him shall deposit in escrow in the form of a cashiers check or by wire transfer with KKL's counsel ("Escrow Agent") pursuant to an Escrow Agreement, attached hereto as Exhibit 1, the sum of Twenty Thousand Dollars (\$20,000.00); and by November 3, 2005, Four Him will deposit with Escrow Agent pursuant to the Escrow Agreement an irrevocable letter of credit ("ILC") from an FDIC-insured commercial bank in form satisfactory to KKL, said ILC to name as beneficiary KKL so that KKL may present the ILC to the issuing bank in order to pay KKL in readily available funds the balance due KKL of Ninety Two Thousand Five Hundred Dollars (\$92,500.00). Should Four Him fail to make the initial escrow deposit by October 17, 2005, or fail to deposit a satisfactory ILC by November 3, 2005, KKL, by written notice to Four Him, shall have the right to terminate the settlement agreement and so notify the Commission. The Settlement Payment shall be disbursed by the Escrow Agent to KKL within five (5) business days following the later of (i) the date the FCC's dismissal of the Adverse Pleadings shall have become a Final Order; (ii) the date upon which the order (or orders) of the FCC allotting Channel 249C2 to Postosi, MO, shall have become Final Order. Under this Agreement, "Final Order" shall mean action by the FCC (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended; (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending; and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the rules and regulations of the FCC has expired. In the event this Settlement Agreement or the KHZR Upgrade is denied, this Agreement shall terminate and all funds and the ILC held in Escrow shall be immediately returned to Four Him.

4. **Authorization and Binding Obligation.** The parties represent to one another that they each have the power and authority to enter into and carry out this Settlement Agreement and that this Settlement Agreement constitutes the valid and binding obligation of each of them in accordance with its terms.

5. **Notices.** Any notice, consent, waiver or other communication hereunder shall be sent by nationally recognized overnight air courier service, so that delivery is made the next business day, to all parties and counsel at the addresses specified below (or at such other address which party shall specify to the other party in accordance herewith):

If to KKL:

KDAA-KMOZ, LLC
P. O. Box 4584
Springfield, MO 65808

with a copy to:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Ave., N.W.
Suite 301

Washington, DC 20016

If to Four Him:

Four Him Enterprises, L.L.C.
4600 Executive Centre Parkway
Suite A
St. Peters, MO. 63376

With a Copy to:

Wray Fitch, III, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

6. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties. There are no other agreements, representations, warranties or understandings (oral or written) between them with respect to the subject matter hereof, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be altered, amended or modified except by a written instrument signed by all parties.

7. **Enforcement.** In the event that either party refuses to cooperate in seeking to effectuate this Settlement Agreement, the other party shall have available all remedies to which they are entitled under law or at equity, and the rules, regulations and policies of the Federal Communications Commission, including any and all rights to the remedy of specific performance. Notwithstanding other rights reserved to the parties pursuant to this Settlement Agreement, the parties agree that the failure of either party to perform its obligations and covenants under this Settlement Agreement is one for which there is no adequate remedy at law, and either party may seek injunctive relief and/or specific performance requiring the other party to perform its obligations hereunder. Should the parties engage in litigation arising out of this Settlement Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

8. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their heirs, successors, executors, legal representatives and assigns, provided however that no party may voluntarily assign this Settlement Agreement without the express written consent of the other parties, such consent not to be unreasonably withheld.

9. **Construction.** The event that any of the provisions contained in this Settlement Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Settlement Agreement shall be construed as if such invalid, illegal or

unenforceable provisions had not been contained herein. Further, this Settlement Agreement is the product of negotiation and preparation by and between the parties, and their respective attorneys. Accordingly, the parties acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another (or the attorneys for one party or another) and shall be construed accordingly.

10. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri (without application of conflicts of laws principles), the Communications Act of 1934 (as amended) and the Rules and Regulations of the Federal Communications Commission. The parties agree to accept the jurisdiction of the courts of the State of Missouri for the resolution of any disputes under this Agreement.

12. **Counterparts.** This Settlement Agreement may be signed by the parties in any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument, and each executed copy shall be an original for all purposes without accounting for the other copies. Copied and/or faxed signature pages may be deemed originals for the purposes of this Settlement Agreement (i.e., with the underlying original signature page to be supplied to the FCC upon request). This Settlement Agreement shall be effective as of the date on which the executed counterparts are exchanged by the parties.

[NEXT PAGE IS THE SIGNATURE PAGE ONLY]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above. Where applicable, this agreement is executed under penalty of perjury.

KDAA-KMOZ, LLC

By: THB mp 10-3-05

Four Him Enterprises, L.L.C.

By: _____

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above. Where applicable, this agreement is executed under penalty of perjury.

KDAA-KMOZ, LLC

By: _____

Four Him Enterprises, L.L.C.

By: *Matthew D. [Signature]*

Before the
Federal Communications Commission
Washington, D.C. 20554

STAMP & RETURN

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 01-151
)	RM-10167
FM Broadcast Stations.)	
(Eminence, Missouri))	
)	
Reclassification of License of FM Station KJEL)	MM Docket No. 05-1715
(Lebanon, MO))	RM 10567

RECEIVED

To: The Office of the Secretary
Attn: Assistant Chief, Audio Division

OCT - 3 2005

Federal Communications Commission
Office of Secretary

**JOINT PETITION FOR APPROVAL OF SETTLEMENT
AGREEMENT AND FOR OTHER RELIEF**

Four Him Enterprises, LLC ("Four Him") and Jeraldine Anderson ("Anderson") hereby submit this Joint Petition for Approval of Agreement and for Other Relief ("Joint Petition"). Four Him and Anderson request that the Commission take the following action:

- (1) Approve the Settlement Agreement attached.
- (2) Dismiss the Comments filed by Anderson on July 16, 2001, in the Eminence, Missouri Rulemaking.
- (3) Resolve the proceeding in Docket No. 01-151 (the Eminence Rulemaking) by allocating Channel 249C2 to Potosi, Missouri, in lieu of current Channel 249C3 and make the other channel substitutions as proposed in Four Him's Counterproposal filed September 4, 2001, to accommodate substitution of 249C2 for 249C3 in Potosi, MO.

Ozark Broadcasting, Inc. ("Ozark") initiated a rulemaking¹ on May 22, 2001, proposing the allocation of Channel 276C3 to Eminence, MO, which conflicts with the proposed substitution of Channel 276A for 248A in Rolla, MO, requested by Four Him in its earlier rulemaking.² In response to the NOPR issued in the Eminence, MO, Rulemaking, Anderson filed Comments on June 16, 2001 in support of allocating 267C3 [sic] at Eminence, MO. Four Him filed a Counterproposal on September 4, 2001 ("Counterproposal") requesting the same upgrade for KHZR and channel substitutions as proposed in its earlier rulemaking. Four Him requested the substitution of Channel 249C2 in lieu of Channel 249C3 in Potosi, MO, and modification of the KHZR license to reflect operation on the upgraded channel. In order to accommodate the upgrade, certain channel substitutions were necessary. Specifically, Four Him proposes to eliminate short spacing to KDAA, Rolla, MO, which currently operates on Channel 248A, by substitution of Channel 276A for 248A in Rolla. The substitution in Rolla in turn causes two short spacings to two other facilities: an allotment on Channel 276A in Linn, MO, and Ozark's KJEL on 279C in Lebanon, MO. The short spacing to Channel 276A in Linn can be eliminated by substitution of Channel 248A for Channel 276A. The short spacing to KJEL is eliminated by the reclassification of KJEL as a C0 facility operating on Channel 279C0 instead of its current licensed operation on Channel 279C. In its Counterproposal, Four Him also requested that Channel 281A be allocated to Eminence, MO. Specifically, Four Him requests the following change in the Table of Allocations:

¹ See, *NOPR (Eminence, Missouri)* MM Docket No. 01-151; RM-10167 (July 13, 2001).

² *Reclassification of License of FM station KJEL (Lebanon, MO)* DA 05-1715, AM-10567.

	<u>Present</u>	<u>Proposed</u>
Potosi, Missouri	249C3	249C2
Rolla, Missouri	248A	276A
Linn, Missouri	276A	248A
Lebanon, Missouri	279C	279C0
Eminence, Missouri	--	281A ³

Anderson has agreed to dismiss her Comments in exchange for payment of \$11,000. This Joint Petition is being filed within the time limits set forth in the Commission's Public Notice Window Announced For Universal Settlements of Pending Rulemaking Proceedings to Amend FM Table of Allotments, DA 05-1688, released June 20, 2005. In this proceeding, the Commission waived settlement reimbursement caps until October 3, 2005 in settlement of certain rulemaking proceedings.

Therefore, it is respectfully requested that Anderson's Comments be dismissed and that Four Him's Counterproposal be granted, including *inter alia* of the substitution of Channel 249C2 for 249C3 in Potosi, MO.

Grant of this Petition for Reconsideration is in the public interest by completely resolving two Rulemakings (RM-10567 and RM-10167) thereby conserving Commission and party resources.⁴

³ Site restricted see Engineering Exhibit 2 attached to Four Him's Counterproposal. In the event the Commission chooses not to add 281A to Eminence, Four Him requests that the Rulemaking proceed nonetheless by allocation of 249C2 in lieu of 249C3 to Potosi. Four Him reiterates its intent to apply for, construct, and operate on channel 249C2 if allocated, and will apply for and construct channel 281A if the channel is allocated to Eminence and Four Him's application is granted.

⁴ Agreement has been reached with all the parties involved. Four Him filed a Petition for Reconsideration, as well as a Joint Petition for Approval of Agreement and For Other Relief, on July 25, 2005. Those pleadings include an Agreement with Ozark Broadcasting, Inc., whereby

FOUR HIM ENTERPRISES, L.L.C.

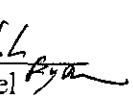
By: _____

A. Wray Fitch III
Timothy R. Obitts
Its Attorneys

Gammon & Grange, P.C.
8280 Greensboro Drive
7th Floor
McLean, VA 22102
703-761-5000

JERALDINE ANDERSON

By: _____

Gene A. Bechtel 
Her Attorney

Law Office of Gene Bechtel, P.C.
1050 17th Street, NW
Suite 600
Washington, D.C. 20036

October 3, 2005

Ozark agrees to a downgrade of its station KJEL, Lebanon, MO, from Channel 279C to 279C0 and to the channel substitutions proposed in the Four Him Counterproposal. Also filed concurrently today, is another Joint Petition for Approval of Agreement and For Other Relief between Four Him and KDAA-KMOZ, LLC, the licensee of KDAA(FM), Rolla, MO, wherein Rolla agrees to the channel substitutions proposed by Four Him in its Counterproposal and to dismiss certain adverse pleadings. As such, agreement has been reached by all parties involved in both the Lebanon, MO, and Eminence, MO, rulemakings.

CERTIFICATE OF SERVICE

I, Stephanie Patton, do hereby certify that a copy of the foregoing **JOINT PETITION FOR APPROVAL OF AGREEMENT AND FOR OTHER RELIEF** was mailed by First Class U.S. Mail, postage prepaid (or hand delivery, as marked with an asterisk), this 3rd day of October, 2005, to the following:


Gene A. Bechtel
Law Office of Gene Bechtel, P.C.
1050 17th Street, NW
Suite 600
Washington, D.C. 20036

Lauren A. Colby, Esquire
Law Office of Lauren A. Colby
10 East 4th Street
Frederick, Maryland 21701

Barthen Gorman, Esquire
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert Hayne, Esquire
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Gary S. Smithwick
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, D.C. 20016


Stephanie Patton

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into effective as of the ___ day of September, 2005, by and among Jeraldine Anderson ("Anderson") and Four Him Enterprises, L.L.C. ("Four Him"), licensee of KHZR(FM), Potosi, MO.

WITNESSETH:

WHEREAS, Four Him and Ozark Broadcasting, Inc. ("Ozark") have pending before the Federal Communications Commission ("FCC") a Joint Petition for Approval of Agreement and Other Relief, under the terms of which Four Him would pay Ozark for downgrading Station KJEL, Lebanon, MO, to Class C0 in order to allot Channel 249C2 at Potosi, MO and upgrade Station KHZR (the "KHZR Upgrade").

WHEREAS, Anderson filed in response to the Notice of Proposed Rule Making MM Docket No. 01-151; RM-1067, Comments with an expression of interest in the proposed Channel 267C3 at Eminence, Missouri, if allotted, on July 13, 2001 ("Comments"), and Anderson is now willing to withdraw her Comments and support the KHZR Upgrade;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Dismissal of Adverse Pleadings.** Concurrently herewith, Anderson and Four Him shall file with the FCC jointly a Joint Request for Approval and for Other Relief ("Joint Request") of the withdrawal of Anderson Comments ("Adverse Pleadings"). Anderson shall in good faith pursue approval by the FCC of the withdrawal or dismissal of the Adverse Pleadings and shall take whatever additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, the withdrawal or dismissal of the Adverse Pleadings and the approval of the KHZR Upgrade.

2. **Affidavits.** Pursuant to Section 73.3525(a) of the Rules, by signing this agreement, Anderson and Four Him declare, under penalty of perjury, that this agreement is in the public interest because it will result in improved service to the residents of Potosi, MO.

3. **Consideration for Withdrawal/Dismissal.** As consideration for the withdrawal/dismissal of the Adverse Pleadings, Four Him shall pay to Anderson the sum of Eleven Thousand Dollars (\$11,000.00) (the "Settlement Payment"). Said payment also represents a portion of the legitimate and prudent expenses incurred and to be incurred by Anderson in connection with her Comments and the dismissal/withdrawal of the same. The Settlement Payment shall be paid by Four Him to Anderson in readily available funds within five (5) business days following the date upon which the order (or orders) of the FCC allotting Channel 249C2 to Postosi, MO, shall have become a Final Order. Under this Agreement, "Final Order" shall mean action by the FCC (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended; (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending;

and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the rules and regulations of the FCC has expired. In the event this Settlement Agreement or the KHZR Upgrade is denied, this Agreement shall terminate.

4. **Authorization and Binding Obligation.** The parties represent to one another that they each have the power and authority to enter into and carry out this Settlement Agreement and that this Settlement Agreement constitutes the valid and binding obligation of each of them in accordance with its terms.

5. **Notices.** Any notice, consent, waiver or other communication hereunder shall be sent by nationally recognized overnight air courier service, so that delivery is made the next business day to all parties and counsel at the addresses specified below (or at such other address which party shall specify to the other party in accordance herewith):

If to Anderson:

Jeraldine Anderson
1702 Cypress Drive
Irving, Texas 75061

with a copy to:

Gene Bechtel, Esq.
Law office of Gene Bechtel, P.C.
1050 17th Street, NW
Washington, DC 20036

If to Four Him:

Four Him Enterprises, L.L.C.
4600 Executive Centre Parkway
Suite A
St. Peters, MO. 63376

With a Copy to:

A. Wray Fitch, III, Esquire
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

6. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties. There are no other agreements, representations, warranties or understandings (oral or written) between them with respect to the subject matter hereof, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be altered, amended or modified except by a written instrument signed by all parties.

7. **Enforcement.** In the event that either party refuses to cooperate in seeking to effectuate this Settlement Agreement, the other party shall have available all remedies to which they are entitled under law or at equity, and the rules, regulations and policies of the Federal Communications Commission, including any and all rights to the remedy of specific performance. Notwithstanding other rights reserved to the parties pursuant to this Settlement Agreement, the parties agree that the failure of either party to perform its obligations and covenants under this Settlement Agreement is one for which there is no adequate remedy at law, and either party may seek injunctive relief and/or specific performance requiring the other party to perform its obligations hereunder. Should the parties engage in litigation arising out of this Settlement Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

8. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their heirs, successors, executors, legal representatives and assigns, provided however that no party may voluntarily assign this Settlement Agreement without the express written consent of the other parties, such consent not to be unreasonably withheld.

9. **Construction.** The event that any of the provisions contained in this Settlement Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein. Further, this Settlement Agreement is the product of negotiation and preparation by and between the parties, and their respective attorneys. Accordingly, the parties acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another (or the attorneys for one party or another) and shall be construed accordingly.

10. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri (without application of conflicts of laws principles), the Communications Act of 1934 (as amended) and the Rules and Regulations of the Federal Communications Commission. The parties agree to accept the jurisdiction of the courts of the State of Missouri for the resolution of any disputes under this Agreement.

12. **Counterparts.** This Settlement Agreement may be signed by the parties in any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument, and each executed copy shall be an original for all purposes without accounting for the other copies. Copied and/or faxed signature pages may be deemed originals

for the purposes of this Settlement Agreement (i.e., with the underlying original signature page to be supplied to the FCC upon request). This Settlement Agreement shall be effective as of the date on which the executed counterparts are exchanged by the parties.

[NEXT PAGE IS THE SIGNATURE PAGE ONLY]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above. Where applicable, this agreement is executed under penalty of perjury.

JERALDINE ANDERSON

By: 

FOUR HIM ENTERPRISES, L.L.C.

By: _____

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above. Where applicable, this agreement is executed under penalty of perjury.

JERALDINE ANDERSON

By: _____

FOUR HIM ENTERPRISES, L.L.C.

By: Matthew Brown

Awf

GAMMON & GRANGE, P.C.

ROBERT B. ADAMS†
STEPHEN M. CLARKE
A. WRAY FITCH III
JAMES A. GAMMON*†
GEORGE R. GRANGE II
STEPHEN S. KAO
STEPHEN H. KING
NANCY OLIVER LESOURD
KENNETH E. LIU
ROBERT W. MALONE
TIMOTHY R. OBITTS
W. FRANKLIN PUGH, P.L.C.‡
DANIEL D. SMITH, P.C.‡
SCOTT J. WARD

*NOT ADMITTED IN VIRGINIA

† OF COUNSEL - MCLEAN

‡ OF COUNSEL - LEESBURG

ATTORNEYS AND COUNSELLORS AT LAW

SEVENTH FLOOR
8280 GREENSBORO DRIVE
MCLEAN, VA 22102-3807

TELEPHONE (703) 761-5000
FACSIMILE (703) 761-5023

WEB SITE
WWW.GG-LAW.COM
EMAIL
GG@GG-LAW.COM

LEESBURG OFFICE
SUITE 300
305 HARRISON STREET, SE
LEESBURG, VA 20175-3729

October 3, 2005

Gene A. Bechtel
Law Office of Gene Bechtel, P.C.
1050 17th Street, NW, Suite 600
Washington, D.C. 20036

--VIA FIRST CLASS MAIL--

Gary S. Smithwick
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW, Suite 301
Washington, D.C. 20016

--VIA FIRST CLASS MAIL--

Re: Lebanon, Missouri and Eminence, Missouri Rulemaking Proceedings

Dear Gary and Gene:

Enclosed are copies of the Joint Petition for Approval of Agreement and for Other Relief and Petition for Reconsideration relevant to the Lebanon and Eminence, Missouri rulemaking proceedings. I am forwarding copies for your records.

Sincerely,



A. Wray Fitch III

Enclosures

FILE COPY

Before the
Federal Communications Commission
Washington, D. C. 20554

STAMP & RETURN
RECEIVED

JUL 25 2005

In the Matter of:

Reclassification of License of
FM Station KJEL
(Lebanon, Missouri)

Amendment of §73.202(b),
Table of Allotments,
FM Broadcast Stations,
(Eminence, Missouri)

Federal Communications Commission
Office of Secretary
DA 05-1715
RM-10567

MB Docket No. 01-151
RM-10167

TO: Marlene Dortch, Secretary
Attn: Audio Division

**JOINT PETITION FOR APPROVAL OF AGREEMENT
AND FOR OTHER RELIEF**

Four Him Enterprises, LLC ("Four Him") and Ozark Broadcasting, Inc.
("Ozark"), by their respective attorneys, hereby jointly request the Audio Division to
simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the application of Ozark (File No. BPH-20030401ABZ)
for full Class C facilities at FM Broadcast Station KJEL, Lebanon,
Missouri (the "Application"); and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715),
which denied Four Him's Petition for Reconsideration of the
denial of its Petition for Rulemaking; and,
- D. Resolve the proceedings in Docket No. 01-151 without allocating
Channel 276C3 to Eminence, Missouri and, instead, grant Four
Him's Counterproposal, filed September 4, 2001, which proposes
to allocate a different channel to Eminence, Missouri.

In support thereof, it is alleged:

1. On June 24, 2005, the Audio Division released a *Memorandum Opinion and Order* (DA 05-1715), denying a Petition for Reconsideration filed by Four Him and directed against a staff letter, rejecting Four Him's Petition for Rulemaking. Four Him is the licensee of Station KHZR, Channel 249C3, Potosi, Missouri. In its Petition for Rulemaking, Four Him proposed the substitution of Channel 249C2 for Channel 249C3 at Potosi and modification of the Station KHZR license to specify operation on Channel 249C2. In order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri. The channel substitution at Rolla required the reclassification of Station KJEL, Channel 279C, Lebanon, Missouri to Channel 279C0.

2. Ozark is the licensee of Station KJEL. Ozark filed the above-described Application for full Class C status for Station KJEL and, because of the filing of that Application, the Audio Division rejected Four Him's Petition for Rulemaking and denied Four Him's Petition for Reconsideration.

3. The FCC has now established a window for settlement in rulemaking proceedings. Acting on that window, Four Him and Ozark have entered into discussions, looking toward an amicable settlement of their differences. An Agreement of Settlement has been reached, a copy of which is attached hereto and marked Exhibit A. Under that Agreement, Ozark will dismiss its application for Class C facilities for Station KJEL and join in requesting the Audio Division to reconsider its action, taken by *Memorandum Opinion and Order*, released June 24, 2005, and grant Four Him's Petition for Rulemaking. In return, Four Him will pay Ozark the sum of One Hundred Thousand

Dollars (\$100,000.00), on the terms and under the conditions specified in the Agreement of Settlement.

4. Ozark has filed a Petition for Rulemaking to add Channel 276C3 to Eminence, Missouri and a *Notice of Proposed Rulemaking* has been issued, looking towards the adoption of that proposal, in Docket No. 01-151. The allocation of Channel 276C3 to Eminence, Missouri is inconsistent with the upgrade proposed by Four Him at Potosi, Missouri. Therefore, as part of the Agreement of Settlement, Ozark has agreed that the proceedings in Docket No. 01-151 should be either terminated without adding Channel 276C3 to Eminence or, in the alternative, that a Counterproposal filed by Four Him to allocate a different channel to Eminence should be granted.

5. Approval of the Agreement of Settlement will serve the public interest. It will forestall the filing of an appeal, directed against the Audio Division's *Memorandum Opinion and Order* of June 24, 2005. It will enable an immediate upgrade in the facilities of Station KHZR, Potosi, Missouri. Thus, it will eliminate the need for further litigation, which would otherwise place a burden on the FCC's staff resources. At the same time, it will provide for improved service to the public from Station KHZR.

6. WHEREFORE, it is respectfully requested that the Audio Division simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the Application; and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking and grant the Petition for Rulemaking filed by Four Him and described in the aforesaid *Memorandum Opinion and Order*; and,

- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

Respectfully submitted,

July 25, 2005

FOUR HIM ENTERPRISES, LLC

GAMMON & GRANGE, PC
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OZARK BROADCASTING, INC.

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By: Lauren A. Colby
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AGREEMENT OF SETTLEMENT

Agreement of Settlement, made and entered into this 20th day of July, 2005, by and between Four Him Enterprises LLC, a Missouri limited liability company ("Four Him") and Ozark Broadcasting Inc., a Missouri Corporation ("Ozark").

WITNESSETH:

WHEREAS, Four Him holds the license issued by the Federal Communications Commission ("FCC") for station KHZR, channel 249C3 Potosi, Missouri; and

WHEREAS, Four Him filed a Petition for Rulemaking, proposing the substitution of channel 249C2 for channel 249C3 at Potosi and modification of the license of Station KHZR to specify operation on channel 249C2 (RM-10567) (Potosi Rulemaking); and

WHEREAS, in order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri and the channel substitution at Rolla required the reclassification of Ozark's station at Lebanon, Missouri, KJEL, from a full class C station to a class C0 station; and

WHEREAS, Ozark resisted the reclassification of KJEL and filed an application (File No. BPH-20030401ABZ) ("the Application") to retain full class C status for station KJEL; and

WHEREAS, because of the filing of the Application, the Commission staff rejected Four Him's Petition for Rulemaking; and

WHEREAS, Four Him petitioned the Audio Division for reconsideration but, by *Order* (DA05-1715) released June 24, 2005, the Audio Division denied reconsideration; and

WHEREAS, Four Him has a right to appeal the Audio Division's decision to the full commission; and

WHEREAS, the parties desire to forestall the filing of any such appeal and, instead, to settle their differences on an amicable basis;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, it is agreed as follows:

1. **Joint Petition:** Within 5 days of the date of execution of this Agreement, the parties hereto will file a joint petition, asking the FCC's Audio Division to simultaneously do the following:

- a. Approve this Agreement;
- b. Dismiss the Application;
- c. Reconsider the Audio Division's Memorandum Opinion and Order (DA05-1715) (Petition for Reconsideration) and grant of the Potosi Rulemaking; and
- d. Request Commission action in Docket No. 01-151, RM-10167, consistent with the Potosi Rulemaking, requesting dismissal of Ozark's request to allocate Channel 276C3 to Eminence, Missouri, and grant of Four Him's Counterproposal filed September 4, 2001)

The parties will vigorously prosecute the Joint Petition and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

2. **Ozark Consideration:** Ozark agrees to take the following actions:

- a. Request dismissal of the Application.
- b. Request the dismissal of allocation of Channel 276C3 to Eminence, MO, as proposed in Rulemaking Docket Number 01-151 and to support, to the extent necessary, Four Him's Counterproposal in Docket Number 01-151.
- c. Support Four Him's Petition for Reconsideration and the Potosi Rulemaking.

- d. Consent to modification of the KJEL(FM) license to specify operation as a Class C0 station or Channel 279C0 Lebanon, MO.

3. **Four Him Consideration:** Four Him agrees to pay Ozark the sum of \$100,000 conditioned on approval of this Agreement and the Potosi Rulemaking allowing KHZR to specify operation on Channel 249C2, Potosi, MO. Payment of the \$100,000 shall be made as follows:

- a. Four Him will deposit \$20,000 in an Escrow Account in the SunTrust Bank in Frederick, Maryland, within ten days of this Agreement. The Escrow Deposit shall be held pursuant to the terms of the Escrow Agreement as provided in Exhibit 1. Four Him will authorize release of the Escrow Deposit to Ozark on grant of the Potosi Rulemaking.
- b. In addition, Four Him shall deliver to Ozark on grant of the Rulemaking a Promissory Note, in form and substance reasonably satisfactory to Ozark, in the amount of \$80,000 bearing interest at the rate of prime plus one percentage point. The Note shall be payable in equal monthly installments of principal and interest over 60 months. The interest rate shall be adjusted every 6 months. The Note shall provide for no penalty in the event of early payment. The Note shall be secured by a security interest and all the personal property owned by Four Him used or useful in the operation of KHZR including, to the maximum extent permitted by law, the station license. Such security interests will be evidenced by the filing of the UCC-1 Form. Ozark acknowledges that its security interest may be subordinate.

4. **Termination:** Either party may terminate this Agreement if the Settlement Agreement and/or the Rulemaking has not been granted within 2 years of the date of this Agreement, provided however, Four Him may in the event Ozark elects to terminate this Agreement, pay the consideration provided in Section 3 and this Agreement shall continue in full force and effect.

5. **Missouri Contract:** This Agreement is a Missouri contract and shall